

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

<p>STATE OF OKLAHOMA,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>TYSON FOODS, INC., et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p style="text-align: right;">Case No. 05-cv-329-GKF(SAJ)</p>
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**STATE OF OKLAHOMA'S HEARING BRIEF FOR
MOTION FOR PRELIMINARY INJUNCTION**

The State seeks a preliminary injunction against all Defendants, preventing them from land applying, or allowing the land application of, poultry waste within the Illinois River Watershed ("IRW"). The State brings this motion under a single federal statute: the Resource Conservation and Recovery Act ("RCRA"). This statute provides that any person, including the State, may commence a civil action:

(B) against any person, . . . including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment[.]

42 U.S.C. § 6972(a)(1)(B) (emphasis added). RCRA further gives this Court jurisdiction to enter an injunction:

The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties . . . to restrain any person who has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B)

42 U.S.C. § 6972(a).

The factual and legal issues to be decided by the Court are straightforward. They are as follows:

1. Are animal manures excluded from RCRA's definition of "solid waste"?

- No. *See, e.g.,* State of Oklahoma's Motion for Preliminary Injunction and Integrated Brief in Support Thereof [DKT #1373], pp. 12-13; State of Oklahoma's Reply to "Defendants' Memorandum in Opposition to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1564], pp. 1-5; and evidence and argument to be presented at the preliminary injunction hearing.

2. Is poultry waste a "solid waste" under RCRA?

- Yes. *See, e.g.,* State of Oklahoma's Motion for Preliminary Injunction and Integrated Brief in Support Thereof [DKT #1373], pp. 4-6 & 12-13; State of Oklahoma's Reply to "Defendants' Memorandum in Opposition to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1564], pp. 1-5; and evidence and argument to be presented at the preliminary injunction hearing.

3. Are Defendants "persons" under RCRA?

- Yes. *See, e.g.,* State of Oklahoma's Motion for Preliminary Injunction and Integrated Brief in Support Thereof [DKT #1373], p. 13; and evidence and argument to be presented at the preliminary injunction hearing.

4. Have Defendants contributed to the past or present handling, storage, or disposal poultry waste in the IRW?

- Yes. *See, e.g.,* State of Oklahoma's Motion for Preliminary Injunction and Integrated Brief in Support Thereof [DKT #1373], pp. 4-6 & 14-17; State of Oklahoma's Reply to "Defendants' Memorandum in Opposition to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1564], pp. 7-11; State of Oklahoma's Reply to

Defendant Peterson Farms, Inc.'s Separate Response to Motion for Preliminary Injunction [DKT #1563], pp. 2-7; and evidence and argument to be presented at the preliminary injunction hearing.

5. **"May" this poultry waste "present an imminent and substantial endangerment to health" in the IRW?**
 - Yes. *See, e.g.,* State of Oklahoma's Motion for Preliminary Injunction and Integrated Brief in Support Thereof [DKT #1373], pp. 6-9 & 17-20; State of Oklahoma's Reply to "Defendants' Memorandum in Opposition to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1564], pp. 6-7 & 11-12; and evidence and argument to be presented at the preliminary injunction hearing.
6. **Does the Court need to consider whether the State will suffer irreparable harm if the requested injunction is not granted?**
 - No. *See, e.g.,* State of Oklahoma's Motion for Preliminary Injunction and Integrated Brief in Support Thereof [DKT #1373], pp. 20-22; State of Oklahoma's Reply to "Defendants' Memorandum in Opposition to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1564], pp. 16-17; and evidence and argument to be presented at the preliminary injunction hearing.
7. **Does the Court need to "balance the harms" as in traditional preliminary injunction motions?**
 - No. *See, e.g.,* State of Oklahoma's Motion for Preliminary Injunction and Integrated Brief in Support Thereof [DKT #1373], pp. 22-23; State of Oklahoma's Reply to "Defendants' Memorandum in Opposition to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1564], pp. 17-18; and evidence and argument to be presented at the preliminary injunction hearing.

8. Will the public interest be served by the granting of the requested preliminary injunction?

- Yes. *See, e.g.*, State of Oklahoma's Motion for Preliminary Injunction and Integrated Brief in Support Thereof [DKT #1373], pp. 6-9 & 23-24; State of Oklahoma's Reply to "Defendants' Memorandum in Opposition to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1564], pp. 18-19; and evidence and argument to be presented at the preliminary injunction hearing.

9. Is a bond required for the preliminary injunction to issue?

- No. *See, e.g.*, State of Oklahoma's Reply to "The Cargill Defendants' Separate Response to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1562], pp. 2-4; and evidence and argument to be presented at the preliminary injunction hearing.

The State will establish all of the necessary elements to entitle it to the preliminary injunction it has requested at the preliminary injunction hearing. Therefore, the State urges that the preliminary injunction be granted.

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